

(1974) 09 AHC CK 0003

In the Allahabad High Court

Case No : Civil Misc. (Review) Application No. 37 of 1974

State of U.P.

APPELLANT

Vs

Jawahar Lal Bhargava and Another

RESPONDENT

Date of Decision : 06-09-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226

Citation : AIR 1975 All 101

Hon'ble Judges : T.S. Misra, J;K.B. Asthana, J;Gopi Nath, J

Bench : Full Bench

Advocate : Shanti Bhushan, Chand Kishore, S.S. Bhatnagar and A.K. Sharma,
for the Respondent

Final Decision : Dismissed

Judgement

K.B. Asthana, J.—This is an application purporting to be under Order 47, Rule 1 read with Section 151, C. P Code presented on behalf of the State of U. P. prvince for a review of our judgment dated 25th February 1974 rendered in a petition under Article 226 of the Constitution filed by Jawahar Lal BharSava a Government servant, who had Questioned the validity of his suspension pending a departmental inquiry against him. We quashed the order of suspension by a writ of certiorari. We held that Rule 49-A of the U. P. Civil Services f Classification, Control and Appeal) Rules did not empower the Government to suspend Jawahar Lal Bhareaya before actually an inquiry as contemplated by Rule 55 of the said Rules had started or was about to start, that is to say Jawahar Lal Bhargava could not be suspended until it was decided by the disciplinary authority to take action and hold an inquiry under Rule 55 of said Rules. We interpreted the main clauses of Rule 49-A and in support of our conclusion we also mentioned a note appended below Rule 49-A as a pointer to the correctness of our conclusion. After the judgment had been rendered the Government deleted the note with retrospective effect as if it was never there. This application for review is grounded on the contention that the note having

been deleted with retrospective effect and the law having been substantially altered the judgment rendered by us on 25th February 1974 becomes erroneous at the face of it.

2. The learned Chief Standing Counsel appearing for the applicant State relied on a Full Bench decision of the Court in Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others, .

3. The office of this Court has pointed out that this application for review is 152 days beyond time. The oral explanation which the learned Chief Standing Counsel gave before us for the delay does not appear to us to be sufficient for condoning the delay. However, it was contended by the learned Chief Standing Counsel that there is no rule of limitation applying to an application calling upon this Court to reconsider its decision under Article 226 of the Constitution. Reliance was placed in this connection on Shivdeo Singh v. State of Punjab AIR 1963 SC 1909. We do not find that the ratio of the decision of the Supreme Court in the said case really helps the applicant. In that case the Supreme Court held that the High Court had always the power under Article 226 of the Constitution in the interest of justice to review a decision rendered by it for correcting palpable errors. It appears that the Punjab High Court had allowed a writ petition which affected the rights of third persons who were not party to that petition. The affected persons then moved an application under Article 226 of the Constitution before the High Court pointing out that they were not party to the earlier petition and they be heard and the earlier decision be set aside. This petition was accepted by the High Court and the whole matter was reopened. The Supreme Court approved of this action by the High Court of Punjab. It is obvious that on the facts of that case what was done by the Punjab High Court was to set aside its order on the representation of the affected party as the order was passed behind its back and then rendered a fresh decision after hearing all the parties interested. Here in the instant case before us what is prayed for is that though every party concerned was heard yet the judgment be reviewed as there has been a substantial change in law. The question then arises whether a review will lie on a subsequent change in law under Article 226 of the Constitution, assuming that the provisions of Order 47, Rule 7. C. P. Code will not apply -- a question on which we express no opinion. However, we may observe that the Rules of Court under Chapter 22 have made the provisions of CPC applicable to the hearing of the writ petitions in this Court. There are decisions of this Court that Order 22 of the CPC applies to writ petitions also when the question arises of substituting heirs and legal representatives of the parties. As we have said above, even if we accept the principle adumbrated by the Supreme Court in the case of AIR 1963 SC 1909 (supra) and proceed on the basis that we have plenary powers and the power for review inheres in the Court still the question would remain that that power must be exercised within a reasonable time. If this Court can review its decisions under Article 226 of the Constitution and the provisions of Order 47 of the CPC strictly do not apply then in that situation also it would be discretionary on the part of the Court to review. An application

inviting this Court under Article 226 of the Constitution to review its decision when it is filed after a long lapse of time without any proper explanation for the delay, we think, this Court would be justified in rejecting the application on that ground alone as that would be sound exercise of discretion. We leave the matter at that.

4. Now coming to the merits we must point out that the learned Chief Standing Counsel assumes that our judgment is based on the note to Rule 49-A. That is not go. We have in our judgment analysed the main clauses of Rule 49-A and construed them according to our wisdom. Even if the note to Rule 49-A were not there our conclusion would not have been different. Mere deletion of the note even with retrospective effect, therefore, does not bring about any substantial alteration or change in law. It is not the case set up on behalf of the State that the main clauses of Rule 49-A have been altered. In our judgment the law remains the same. In that view of the matter the Full Bench decision of this Court in the case of Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others, would not apply and the learned Chief Standing Counsel cannot draw any benefit from the ratio of the decision in that case,

5. For the reasons given above we do not find any merits in this application and reject it. There would be no order for costs.